

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, et al, Civil No. 3:17cv00072

Plaintiffs,

vs.

Lynchburg, Virginia

JASON KESSLER, et al,

2:06 p.m.

Defendants.

January 6, 2020

TRANSCRIPT OF TELEPHONIC STATUS HEARING
BEFORE THE HONORABLE NORMAN K. MOON
UNITED STATES SENIOR DISTRICT JUDGE

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Computer-Aided Transcription.

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1 THE COURT: Thank you all for joining the conference.
2 I just want to make a few remarks first to counsel and Mr.
3 Kline.

4 I scheduled this conference call to address and
5 consider several recent filings and developments since this
6 Court issued its order on Friday, January 3rd, 2020, holding
7 that Mr. Kline remains in civil contempt and must surrender
8 himself to the custody of the U.S. Marshal by today at noon.
9 Mr. Kline has done so and is currently being held in custody.

10 He brought several items and documents with him. I
11 understand these include another new cell phone and several
12 documents that were filed on the court's docket today. The
13 first docket includes steps he has taken to purge himself of
14 contempt. The other is updated responses to Interrogatories.

15 I considered those and I've considered plaintiff's
16 filing this morning that identifies another email address
17 that Mr. Kline appears to have omitted from his list of email
18 accounts.

19 To reiterate where we are today, I have found on
20 several occasions since November 2019 that Mr. Kline is in
21 contempt of numerous discovery orders of this Court and Judge
22 Hoppe. I've also held in numerous orders that Mr. Kline must
23 satisfy paragraph 4A and B of this Court's civil contempt
24 order to purge himself of contempt.

25 As of Friday, Mr. Kline had not demonstrated

1 substantial compliance and I continue to find that Mr. Kline
2 was in civil contempt.

3 Now, we'll -- I'd like to hear from the plaintiff
4 fir4st -- or the plaintiffs.

5 What is each of your positions that he has now
6 complied with either subpart of paragraph 41?

7 MS. PHILLIPS: Hi, Your Honor. This is Jessica
8 Phillips speaking on behalf of the plaintiffs.

9 Our view -- we have had a chance and an opportunity
10 to review the two documents that were filed with the court
11 today on -- by Mr. Kline or on his behalf. Our view is, very
12 firmly, that he remains out of compliance with numerous
13 orders.

14 The first thing I'll start with is our filing today.
15 Over the weekend, we learned about yet another email address
16 associated with Mr. Kline that he never disclosed to
17 plaintiff. It appeared that in 2017 after the
18 Charlottesville Unite the Right rally, he tweeted about this
19 previously undisclosed email address and actually asked
20 people to send him pictures and video evidence -- his
21 words -- from Charlottesville. So when he's testified under
22 oath today in the filings that he made that he's given over
23 all account information, that was false.

24 We had an opportunity, as you know, to depose Mr.
25 Kline. He didn't disclose this email address. He's now had

1 multiple opportunities. I think this is his third full
2 revision of his Interrogatory responses and he still failed
3 to identify this particular email address.

4 I want to emphasize that from the plaintiff's
5 perspective this is possibly the most egregious deficiency
6 yet. He claims to have -- Mr. Kline claims to have only one
7 responsive document, which Your Honor found not credible to
8 begin with, in his possession. But we've now learned that he
9 was, in fact, actively soliciting attendees to the rally to
10 send him evidence for this case. There's simply no
11 explanation for why he failed to disclose this email address
12 other than it was purposeful, to hide this from us.

13 In terms of his Interrogatory answers, he -- I will
14 note that he revised his Interrogatory responses today. He
15 mentioned the police officers, although obviously he doesn't
16 have those names in his revised answer to Interrogatory 3.
17 But he failed, as Your Honor ordered him to do -- he failed
18 to provide any explanation in his response to Interrogatory 4
19 to explain the 347 number, particularly given the
20 documentation that this -- this court's documentation --
21 linking him to that number that we presented at the
22 previous -- at the previous hearing in Charlottesville in
23 December.

24 I don't believe he's provided any update to the
25 plaintiffs or to the Court on his efforts to find counsel.

1 As I've already pointed out, he claims to have only
2 one responsive document. Our view is that is completely
3 implausible, particularly given this new information that we
4 have now about this cvillereports@gmail.com email address.

5 My understanding from my review of his documentation
6 filed today is that he did not include any information
7 regarding his efforts to access his credentials for his
8 social media, and I'd like to give an example, if I can.

9 We have figured out that even if an account has been
10 deactivated, which is what Mr. Kline's testimony is -- that
11 his Twitter accounts are all deactivated so he can't access
12 them, and that he used burner emails. If you go to Twitter
13 and you enter the user name, which he has disclosed the eight
14 different user names he used at various times. If you enter
15 that user name into the "forgot your password" field, that
16 will show you a portion of the email account and/or phone
17 number associated with the Twitter account. He could have
18 done that, but as far as we know, he hasn't done that. But
19 had he done so, he would have seen that, in fact, what comes
20 up is not burner emails but a couple of gmail ones and one
21 that looks like it's an identityevropa@yahoo.com email
22 address. In two instances, if you put in his user names from
23 Twitter, what comes up is a phone number that ends in 23,
24 which, you know, not coincidentally, from the plaintiff's
25 perspective is how the 347 number that Kline testified that

1 he has no idea what that number is -- that particular number
2 is 347-868-7023.

3 So -- yeah. Just to sum up all of the points we
4 argue is that Mr. Kline is still not in compliance with
5 paragraphs 41A and B from Your Honor's order, and that he
6 should be -- continued to be held until he manages to purge
7 himself of this contempt.

8 THE COURT: All right. Thank you.

9 Do any of the other plaintiff's counsel wish to
10 speak?

11 MR. BLOCH: Judge, this is Mike Bloch from Kaplan
12 Hecker & Fink.

13 I would just add one thing -- that Your Honor's
14 previous order also addressed Mr. Kline's efforts to secure
15 counsel in this case, and I don't believe he's done that.

16 THE COURT: Okay.

17 Mr. Kline, I've considered your submissions and will
18 give you an opportunity to say anything else on your behalf,
19 but you'll have to do it under oath, and I'll ask the clerk
20 to swear you, if you wish to respond.

21 ELLIOTT KLINE, SWORN

22 THE COURT: Mr. Kline, would you get close to the
23 microphone and speak into it?

24 THE DEFENDANT: Yes, Your Honor. Can you hear me?

25 THE COURT: Yes.

1 THE DEFENDANT: Okay.

2 Your Honor, so as far as -- I'm just going to go
3 through my memory. As far as trying to get counsel, a
4 lawyer, that has essentially been -- there's been no
5 communication because I don't have a working cell phone. The
6 cell phone that I brought with me today, the new one, I
7 picked it up -- I picked it up on Saturday -- so just this
8 past Saturday -- so I haven't been able to communicate with
9 any counsel or anything like that. I've been trying to do
10 research on what type of counsel I need for a case like this.
11 However, I haven't had any contact with any counsel or
12 attempted to get any counsel just because I don't have a
13 number for them to call me back on or anything like that.

14 That is -- that's basically where I'm at right now.

15 THE COURT: Well, I understand that the cell phone
16 you have, you have no charger for; is that correct?

17 THE DEFENDANT: I just didn't bring it inside with
18 me; correct, Your Honor.

19 THE COURT: So you have a charger, but it's not --
20 you didn't bring it with you.

21 THE DEFENDANT: It's in the car, Your Honor.

22 THE COURT: Well, okay.

23 Anything else you wish to say?

24 THE DEFENDANT: Yeah.

25 So -- I'm also having trouble coming up with funds

1 for counsel as well. So that's the first thing.

2 As far as this -- I'm just looking -- I have in front
3 of me this cvillereports@gmail.com. This an email I don't
4 remember making or anything like that. The only way I would
5 know if I have access to it or anything like that would be if
6 I got on a cell phone or a computer and tried to log on with
7 the same password that was for the other accounts. So -- I
8 don't recognize that email. I know I might have thrown it
9 out there, but I don't know if that's an email that I made or
10 if I was posting that for somebody else.

11 THE COURT: Well, did you receive any pictures?

12 THE DEFENDANT: I don't remember if that's an email
13 that I had the inbox access to or if that was --

14 THE COURT: The question is: Did you receive any
15 pictures? From anyone?

16 THE DEFENDANT: No, Your Honor, not that I know of.

17 What I'm trying to say is I might have just been
18 tweeting that so that people could see it, but it could have
19 been somebody else's email inbox is what I mean. But I don't
20 know that for sure. That's not an email inbox that I
21 remember using or going into or receiving or anything like
22 that -- receiving the messages that are requested for. I
23 think -- if I had to guess, I would think that is a tweet I
24 made specifically just to get that out to people that were
25 going to the rally, not necessarily that I had control over

1 personally.

2 THE COURT: Well, did you take any pictures yourself?

3 THE DEFENDANT: No, no. The only pictures -- the
4 only pictures that day that I would have would be on my
5 phone. Those were not pictures that I took. Those would be
6 pictures that I saved from the internet. But other than
7 that, no. I didn't take any pictures or recordings or video
8 or anything like that that day, or any other -- anything else
9 related to that day or to Unite the Right.

10 THE COURT: What email accounts did you search to
11 look for responsive documents?

12 THE DEFENDANT: I searched the Deplorable Truth email
13 address, the Eli Mosley email address and the eli.r.kline
14 email address. The other email address, the identityevropa
15 email address, I do not have access to and that's the only
16 other email address I had access to or I used related to
17 Unite the Right.

18 THE COURT: What devices did you search?

19 THE DEFENDANT: The cell phone. So the cell phone
20 that I have -- or that I handed in already, and that was
21 returned to me and has already been imaged, that's the main
22 device I used -- well, that's the only device I really used
23 to go in and search the emails and all that stuff, pictures
24 and things like that.

25 THE COURT: Did you search your computer?

1 THE DEFENDANT: I don't have one.

2 THE COURT: Did you search any other computer?

3 THE DEFENDANT: No. The only device I used to
4 organizing the Unite the Right and the whole thing was the --
5 I used the discord program on my phone.

6 THE COURT: I'm going to ask you all to stand by for
7 about two minutes.

8 MS. PHILLIPS: Okay. No problem.

9 (Off the record.)

10 THE COURT: Okay. I'm back.

11 Did you review the email accounts using your search
12 terms -- using search terms?

13 THE DEFENDANT: Excuse me, Your Honor? What do you
14 mean by that?

15 THE COURT: Did you review email accounts using
16 search terms?

17 THE DEFENDANT: Yes, Your Honor. I searched for
18 things like "Unite the Right, Alt Right." I did a search,
19 like, that period of time. I searched through all three of
20 those email addresses I have access to. I searched for those
21 things around that time, those topics, and there's nothing.

22 Like -- like I said, the only document that was
23 produced for this whole thing was that planning document --
24 by me, anyway. And, essentially, that just was something
25 that I was sending out to leaders for a while of various

1 groups. The whole thing was very decentralized so I was
2 sending that out to a select few people and then we started
3 sending it out to more people. That was all sent and done
4 through Discord. But there's no -- there was no other
5 documents that I made or anything like that because it was
6 all decentralized. It was all, you know -- like, League of
7 the South did their own stuff for them. Traditionals Workers
8 Party did their stuff for them, things like that. It wasn't
9 like -- it wasn't, like, you know -- there wasn't a need for
10 many documents. It was just one overarching document and
11 that's -- you know, that's the document that I've handed in.

12 THE COURT: Okay. You said "around that time." What
13 exactly -- what is the beginning date that you searched and
14 the ending date?

15 THE DEFENDANT: I've searched from -- I searched from
16 long before. So I searched from August 2015 all the way up
17 through until today for emails and things like that in those
18 emails. I went all the way back to the creation of the Eli
19 Mosley and Deplorable Truth email, and went through from
20 there.

21 The eli.r.kline email have, like, nothing in it as
22 far as -- it had absolutely nothing in it from Alt Right
23 stuff. It was just, like, the recovery email I used for the
24 other two email addresses. But the other two, I went through
25 and I didn't find any sort of documents, conversations,

1 emails, anything like that.

2 Like I said, we used Discord to communicate, not
3 email, for the event.

4 THE COURT: Did you look for any texts that were
5 potentially relevant to plaintiff's discovery request?

6 THE DEFENDANT: Yes.

7 So before I handed my phone over, Your Honor, I went
8 through the phone at the -- about the same time period. So I
9 went back through -- I mean, I went through every single
10 phone conversation block I had; right? So looking for any
11 sort of communication or anything like that. The only
12 communications I really had, which I've already disclosed, is
13 the stuff with, like, Jason Kessler, Richard Spencer --
14 people like that. But I've already handed that phone over to
15 third-party discovery, and that's the one I've already gotten
16 back, that they've already imaged, with all those
17 conversations on it.

18 THE COURT: I'll ask you again about the pictures.
19 Did you look in any storage -- cloud storage accounts for
20 pictures?

21 THE DEFENDANT: Yeah. So the cell phones -- both the
22 cell phones I handed over, the iPhone -- I think it's a 5S or
23 6S. That first phone had every picture I've had on it, ever,
24 basically -- was on that phone. I never deleted any pictures
25 or anything like that. That had all pictures -- all the

1 pictures I've ever had on it. So there was pictures on there
2 that I had taken, not necessarily -- not -- there was no -- I
3 didn't record anything or take any pictures while I was
4 there. It just had saved photos that were sent -- that, you
5 know, I found online, basically, or that were posted in the
6 Discord that were related to the Unite the Right stuff.

7 So there was no --

8 THE COURT: All right.

9 THE DEFENDANT: There's no pictures that I was sent,
10 for example, from this email address, this cvillereports
11 email. There's no pictures or anything like that in there.
12 Again, they're all on that iPhone 6S that I had -- that I had
13 imaged already by the discovery vendor.

14 THE COURT: All right. I'm going to allow
15 plaintiff's counsel to ask any follow-up questions they might
16 have.

17 MS. PHILLIPS: Yes.

18 The one follow-up question that I have -- I mean,
19 with regard to the cvillereports@gmail.com email address, the
20 Appendix B or Exhibit B that we attached to our submission
21 today is a -- is a Discord post that explicitly links
22 cvillereports@gmail.com to Eli Mosley, which Mr. Kline has
23 conceded was his alias during the operative time period here.
24 So I guess my question is, you know, do you continue to
25 maintain that that was not your email address, even though

1 you were emailing -- excuse me -- you were tweeting about
2 that email address and you were independently connected by
3 someone else to that email address.

4 MR. KLINE: Well, my response is that I'm not sure.
5 I don't remember using this email address or setting up an
6 email address like this or anything of that. The only way I
7 would be able to tell for sure is if the password was the
8 same password I've used for other accounts. So I'd have to
9 go in and check.

10 Now, I'm -- I'm almost certain that I did not create
11 that email address or use that email address, and the -- I
12 believe what you're referring to here is the Pay Spin sent to
13 cvillereports@gmail.com/Eli Mosley for additional evidence on
14 cville case?

15 MS. PHILLIPS: Yes; correct.

16 MR. KLINE: I think that's just putting it for
17 attention thing. I don't think that -- I honestly do not
18 remember using this account personally. If anything, I think
19 that it was an account that several people might have had
20 access to and I was asking for things that were sent here
21 that we're talking about here to be --

22 MS. PHILLIPS: Well, you weren't just asking for
23 things; right? You were asking for entire raw footage to use
24 as evidence. You asked for "a picture of myself with the
25 bloody shirt." You said, We need pictures and video evidence

1 from the parking garage incident. That's what you asked for,
2 all things very relevant to this case.

3 MR. KLINE: Yes, but --

4 MS. PHILLIPS: Now, you're saying you don't remember
5 actually using or having access to this email address. But
6 clearly you did; right?

7 MR. KLINE: Not necessarily. Like I said, I'm asking
8 for these things, but at the time when that case -- when that
9 incident first happened, there was people trying to collect
10 information on what happened. So video evidence --

11 MS. PHILLIPS: Including you.

12 MR. KLINE: No. I was not part of an investigation
13 team or anything like that. I was using my social media's
14 reach to let everybody know that they would be able to send
15 information to that email address. I do not believe, like I
16 said, that that's an email address that I set up and had
17 access to. However, if I did, it would have the same access
18 and password as the other email addresses that I've used. So
19 I would be able to go right in and get access -- give access
20 to it if it's an email address that I used. But I don't
21 believe it is an email address that I used.

22 MS. PHILLIPS: Okay. Do you concede that in your new
23 Interrogatory answer -- answer to Interrogatory number four,
24 you failed to explain the 347 number, particularly given the
25 Discord document that I showed you at the last hearing that

1 links you to that number?

2 MR. KLINE: I don't have that in front of me right
3 now to know exactly which one you're talking about. However,
4 that phone number is not -- I've -- I've looked through that
5 phone number. When I went through and did my email search, I
6 looked through on that phone number and everything. That is
7 not a phone number I've ever used. I don't know why that
8 phone number is next to my name on that sheet. I don't know
9 if it was somebody else's number that I put there -- that I
10 put there by accident or was put there by somebody else
11 before it was sent out, but that is not a number that I've
12 ever used.

13 I've given over every phone that I've owned or had
14 access to to the Court. It's the iPhone 6, the original
15 Walmart phone, and the iPhone -- the other iPhone that I
16 handed over was apparently lost. And then the phone I
17 brought in today that I purchased with the sole intention of
18 being able to get in the account with the discovery vendor
19 like we did on Saturday or -- Friday rather.

20 MS. PHILLIPS: Have you -- did you do -- when I was
21 describing our efforts to go on to Twitter with an account
22 that has been deactivated and enter the user name in the
23 "forgot your password" field -- have you ever done that?

24 MR. KLINE: Yes. That was the first thing I had to
25 do when I went to go log into the accounts is I typed in --

1 because I didn't have the email addresses at all so I typed
2 in the user names. But they were all starred out. Like,
3 they don't -- it's not a complete email address and it's not
4 a complete phone number, so I don't know --

5 MS. PHILLIPS: No, that is absolutely correct. But
6 you can see that at least one begins with "I" and then has --
7 "I" and then the number of stars and then "at y", and a
8 number of stars; right?

9 MR. KLINE: I mean, I don't remember -- I don't
10 remember right now which one -- like -- I don't remember the
11 asterisks that were added to the accounts I tried to get
12 into. However --

13 MS. PHILLIPS: What about -- what about the two --
14 what about the two -- the two Twitter accounts or user names
15 that you set up with a phone number that ends in 23? What
16 phone number was that?

17 MR. KLINE: I don't know -- the only way -- the way I
18 set up Twitter accounts was I would go on to -- I don't even
19 remember the website's name. If you just, like, google,
20 like, burner email addresses or fake email addresses,
21 one-time use email addresses, I just used one of those
22 programs for an email address. And then the exact same thing
23 for a phone number, if I needed a phone number, where you can
24 pay, like, a dollar and it will let you get a text message or
25 two for an hour or two for the verification code for Twitter,

1 and then that was it. These aren't numbers or emails that I
2 had access to or actually used. They were emails and numbers
3 specifically set up so that I could make a Twitter account,
4 and the numbers --

5 MS. PHILLIPS: Right.

6 MR. KLINE: The numbers -- just having a number to
7 the same is -- doesn't mean I had access to that phone
8 number.

9 I've never -- I've never in my life had any other
10 phone numbers or access to any phone numbers outside of the
11 numbers with 610 as the area code and 484 as the area code.
12 I've never had a number outside of those two area codes.

13 MS. PHILLIPS: Okay, despite the fact you included
14 that 347 number on the planning documents that you concede
15 you drafted, edited and circulated in the lead-ups to the
16 Unite the Right rally.

17 MR. KLINE: That is untrue. I've said multiple times
18 that I put together the document and then someone else would
19 put it in a Word document and post it in Discord after I
20 would send it to them through Discord.

21 MS. PHILLIPS: So you created the document; correct?

22 MR. KLINE: Correct. But somebody else edited it
23 specifically for grammar and things like that, and spelling
24 and things like that. Like, it could easily be something
25 that somebody changed the number for some reason and just

1 put -- and put that -- I've never seen that number. I do not
2 have that -- that is not a number that I've ever had access
3 to. And when I went through emails and searched, I searched
4 that specific number as well. I've never had a phone number
5 that does not have a 610 or a 484 area code, and I've never
6 used that number or seen that number outside of that one
7 document. And on every other document other than that one
8 copy of that one, it shows my 610 number. So I think that --
9 in my opinion, I think that that was an edit that was not
10 made by me with a number that I did not use.

11 MS. PHILLIPS: Who edited that document then?

12 MR. KLINE: I don't know. It was somebody different
13 every time, almost. I don't know who would have edited it or
14 done the editing on that one. It was, basically, a document
15 that I made. I posted it to one of those channels in the
16 Discord and then somebody would pick it up and edit it on the
17 fly. You'd have to look through the Discord records to see
18 who would be, like, Oh, I've got it, or, I'll edit it, or
19 whatever. I don't know.

20 I don't know who would have edited it and I
21 specifically don't know who would have edited that specific
22 phone number. I mean, it was a very long time ago, but the
23 record would be in the Discord files or the Discord stuff
24 that you guys have.

25 MS. PHILLIPS: Okay.

1 You also listed on that particular document your
2 Deplorable Truth email address; right?

3 MR. KLINE: Correct.

4 MS. PHILLIPS: Okay. So you listed your correct
5 email address but not your correct phone number. Is that --
6 is that what you're saying?

7 MR. KLINE: I don't know if I -- like I said, I don't
8 know if those -- that email address -- I'm sorry -- that
9 phone number was edited after I sent it in, but I know for a
10 fact that is not a phone number that I've ever used or ever
11 had.

12 MS. PHILLIPS: Okay. But you don't know who edited
13 it. You have no idea why it was in a document that you
14 concede you created.

15 MR. KLINE: I created the original copy. I posted it
16 to Discord that you guys have access to. Somebody picked it
17 up and edited it and then posted in the Discord for other
18 people. So between --

19 MS. PHILLIPS: Well --

20 MR. KLINE: Between the time I --

21 MS. PHILLIPS: You've also testified in your
22 deposition that you yourself edited it numerous times. There
23 were numerous versions of that particular document.

24 MR. KLINE: Yes. I can -- I constantly changed the
25 original. But like I said multiple -- like, in the -- in

1 the -- in the versions, the different versions that you guys
2 have, or that the Court has, it -- it has the 610 number for
3 all but one of them. So I believe that this is a case where
4 somebody that was editing it changed that number. I don't
5 remember why or how or anything like that or who did it. But
6 someone changed that number and that's why that number is in
7 there.

8 I am 100 percent certain that I have never used any
9 other phone numbers or had any other phones other than ones
10 that start with 610 or 484. I've never seen that number.
11 I've never used that number or anything like that.

12 MS. PHILLIPS: Just like you've never seen the
13 cvillereports@gmail.com email address.

14 MR. KLINE: No, that's different. I've said that
15 that is an email address that I don't remember using or
16 having access to. However, if it was an email address that I
17 put together, it would have the same password as the email
18 addresses I've put forward before. So I would need to get on
19 a computer or a cell phone and see if I can get into that
20 account. However, I don't believe that that's an account
21 that I set up. But if it is an account that I set up, I
22 should be able to get into it. It would have just been one
23 that I forgot to include because it's not something I
24 actually used outside of, you know, what would be posted
25 here.

1 But like I said, I don't believe that that is an
2 email address that I used or I had access to it. I think I
3 was just spreading that message for people to send stuff to
4 that inbox. But I'd have to check.

5 MS. PHILLIPS: On behalf of who?

6 MR. KLINE: On behalf of --

7 MS. PHILLIPS: On behalf of who? Who else would have
8 had access to the cvillereports@gmail.com email address?

9 MR. KLINE: One of the other Discord users.

10 MS. PHILLIPS: But you don't know who?

11 MR. KLINE: Everyone in the Discords use a fake name
12 and it was more than two years ago. So I wouldn't
13 remember -- I wouldn't remember the specific person on who,
14 you know -- there's very little that I'd be able to remember
15 as far as, like, specific people doing specific things. I'd
16 have to go into the -- you know, the Discord chats that we
17 have and maybe search through those and see if I could figure
18 out who it would have been.

19 But as far as, like, do I know exactly who would have
20 edited it or had access to that? No. But the best I can do
21 is try to log into that account using the same password I
22 usually use, and try to get into the account. But I do not
23 think that that is an account that I created or that I had
24 access to.

25 MS. PHILLIPS: But you don't know who did and you

1 don't know who you were tweeting numerous times out on behalf
2 of with regard to this email address; is that right?

3 MR. KLINE: It would have been someone -- it would
4 have been a Discord user so you guys would be able to tell
5 through the Discord messages.

6 MS. PHILLIPS: Okay.

7 I just want to correct you on one thing. If we were
8 in person, I would show you, but there are, in fact, at least
9 two versions that we have appended to our motion for
10 evidentiary sanctions. It was Exhibit E to our motion for
11 evidentiary sanctions, an August 8, 2017, version of the
12 Operation Unite the Right Charlottesville 2.0 document, and
13 Exhibit S of the same documents was an August 10th version.
14 Both of those listed the 347 number.

15 MR. KLINE: Is that the August 8th and 10th version?

16 MS. PHILLIPS: Yep. Correct.

17 MR. KLINE: Yeah. Like I said, I truly do not have
18 another phone number. I don't know why that number was
19 listed there next to my name. Like I said, there's nothing I
20 can think of why THAT would be like that. The only number I
21 used was that 610 number during -- during the --
22 specifically, the Unite the Right was that 610 number. I
23 used that the entire time, and that was the only number I
24 used.

25 MS. PHILLIPS: Your Honor, I don't have any other

1 questions.

2 I'll ask if any of my fellow co-counsel have any
3 questions for Mr. Kline?

4 THE COURT: All right.

5 MR. BLOCH: Judge, this is Mike Bloch. I have no
6 questions.

7 THE COURT: Anyone else?

8 MR. LEVINE: Your Honor, I have one question. It's
9 Alan Levine.

10 THE COURT: Yes.

11 MR. LEVINE: Mr. Kline, Mr. Kessler has testified in
12 his deposition that he texted with you and communicated with
13 you separately over a cell phone. What number did you use to
14 communicate with Mr. Kessler?

15 MR. KLINE: The 610 number that's already been handed
16 over and imaged by the discovery vendor.

17 MR. LEVINE: Nothing further from me, Your Honor.

18 THE COURT: Okay.

19 Anyone else?

20 MS. PHILLIPS: No, Your Honor.

21 THE COURT: Okay. I'd just like to ask you -- the
22 plaintiff. With regard to the filing you made this morning,
23 I think you said you just learned of this account?

24 MS. PHILLIPS: Yes, that's correct.

25 THE COURT: It seems like it's been out there a long

1 time somewhere. Is there any reason you wouldn't have known
2 about it before now?

3 MS. PHILLIPS: My understanding is that we
4 received -- we received the Twitter post, which is one of, as
5 you know, Your Honor, the eight different accounts that Mr.
6 Kline has from -- I believe it was a member of the public --
7 and that's how we learned about it.

8 I am -- in terms of, you know, whether or not we have
9 yet to go through every single post for all eight of Mr.
10 Kline's accounts, we have not done that, number one, because
11 he hasn't given us access to. And to the extent that some
12 were publicly available, I'm honestly not sure how the member
13 of the public found them.

14 If somebody else on plaintiff's -- of my co-counsel
15 want to weigh in there, I'm happy to hear from them, but I
16 don't believe that we could have easily found that before we
17 learned of it this weekend.

18 THE COURT: Okay.

19 Anyone else?

20 MR. KLINE: Your Honor -- this is Mr. Kline, Your
21 Honor.

22 I'm going to say, though, that I did not know about
23 this email address. Earlier, the plaintiffs had said I was
24 trying to hide it intentionally or something like that. I
25 had no -- I had no recollection and no idea about this email

1 address until I just saw this just a couple minutes ago.

2 So, like I said, I can go through and check to see if
3 it's an email address that I'm able to get into, which, if
4 that's the case, I can hand it right over to the discovery
5 vendor. Or if it's not, I can write, you know, a sworn
6 statement under oath saying -- or, you know, describing that,
7 and maybe amend my Interrogatories to include that email
8 address describing that I do not have access to that email
9 address. But I don't know right now. This is the first time
10 I've seen it as well.

11 THE COURT: Hold on just a minute.

12 You previously said, I believe, that you needed to
13 work with the vendor to get access to the account.

14 MR. KLINE: Yes. There's one more email --

15 THE COURT: So in cooperation with the vendor.

16 MR. KLINE: Your Honor, there's one more email
17 address that the vendor had told me that they needed to try
18 to get access to. They weren't able to when we were on the
19 phone the other day.

20 The reason I went out and purchased that new phone on
21 Saturday was specifically so that they're able to send the
22 verification code to me to be able to get into that account
23 or what have you. So there's only that one last email
24 address that they're trying to get into, but that's a
25 five-minute process. We've already done the other two email

1 addresses. I'm not sure which email it is that he has left
2 to do, but that's like a five-minute process. All he has to
3 do is go to log in. It's going to ask for a verification
4 code to get sent to that phone I just got. I just read it to
5 him over the phone and then he lets me know right then and
6 there if it's good to go. So I'm able to do that when ever
7 the vendor is ready to do that.

8 THE COURT: All right.

9 Does anyone else have anything they'd like to add at
10 this point?

11 MS. PHILLIPS: Your Honor, this is Jessica Phillips
12 for the plaintiffs.

13 I don't have anything else to add.

14 THE COURT: Okay. I'm going to ask you all to stand
15 by for a couple of minutes.

16 (Off the record.)

17 Okay, I'm back on.

18 I was hoping we could get further along today and
19 come to some conclusion regarding this, but, Mr. Kline,
20 you're still not in compliance with the Court's orders and
21 you have not -- it's obvious you're in contempt. I had hoped
22 maybe to have a hearing tomorrow, but I don't see that a
23 hearing tomorrow is going to do it -- do any good. I think
24 you need to spend an hour or two this afternoon -- well, it's
25 2:45 now -- until about 4 o'clock, and do everything you can

1 because the marshal has to take you to the Charlottesville
2 jail, and you can work on this if you're willing and -- to
3 try to bring yourself into compliance. You can continue to
4 work and do the things you need to do to do so.

5 We're going to issue another order, probably today,
6 at least by early morning, and will follow up on this
7 hearing. But I mean, this is serious business. You have to
8 cooperate and you have to make a good faith effort to comply
9 with all the discovery that's been required of you.

10 So with that, I'll ask the marshal --

11 MR. KLINE: Your Honor --

12 THE COURT: You have something --

13 MR. KLINE: Your Honor, what is it that I'm still
14 missing? I mean, the only thing --

15 THE COURT: Okay. You heard -- you were here during
16 this hearing today. You heard what the plaintiff's counsel
17 said, and I asked you to respond to it, and you did not
18 refute what plaintiff's counsel have stated that you have not
19 done. And, also, the Court has given you previous written
20 orders that you needed to comply with, and you've not fully
21 complied with those.

22 I'm going to issue another order today, and I'm not
23 going to stand, you know -- sit here and quarrel with you
24 over the thing. I'm just going to issue a follow-up order
25 today and you have to get to the point that you're in

1 substantial compliance before you're going to be released.

2 MR. KLINE: Your Honor, the only other things I can
3 do at this point is the cvillereports email address that I
4 just got five minutes ago, which would need to be done on my
5 devices or a computer. And then the discovery surrender,
6 they told us on Friday when we spoke to them, he said --
7 we're going to go through, he said, Oh, it should be good and
8 if it's not, I'll let you know. And like I said, it will
9 take five minutes, but that's, again -- that's something that
10 needs to be done over the phone or on my devices; right? So
11 neither of those things I would be able to do while in
12 custody or in jail. The only -- the only other things that
13 the plaintiffs has said that I haven't done yet or haven't
14 done, I've pushed back and I've said, Yes, I have done that
15 to the best of my ability, or I've handed that in or anything
16 like that.

17 The Twitter accounts, I do not have any access to any
18 of those. I've testified to that multiple times.

19 The documents they say -- you know, you guys are
20 saying I have more documents, I must have more documents -- I
21 do not. The only document is that planning document. I
22 searched everywhere in all of my files and all of my things I
23 have access to, all my accounts, I've gone and done, you
24 know, responded to their -- you know, their orders or their
25 motions that they've sent me at midnight. I responded at

1 2:30 a.m.

2 I'm trying to comply with this order in good faith.
3 However, the only things that I can see that I am missing at
4 this point would be the cvillereports email address, which I
5 just got just today along with the Court, and the vendor
6 discovery, which is something that I've been -- I'm more than
7 willing to comply with and I have that phone just for that
8 and it will take all but five minutes. I could do it right
9 now.

10 So, like I said, I'm just unsure what else there is
11 they think that the -- that plaintiffs think that there's
12 something I can do, specifically from jail as well as just do
13 in general, that --

14 THE COURT: Well, the problem is, Mr. Kline, this has
15 been going on for how long now? I mean, you went through
16 Judge Hoppe for more than a year on this and then I told you
17 you didn't get to start over with me with Judge Hoppe. Then
18 we're up here -- we're here today and you still are saying,
19 well, you need more time and, you know, you only do something
20 when you're under compulsion and so -- we all have -- I mean,
21 you're not the only case on the docket. We have other things
22 to do. We have -- other people -- other people have lives,
23 too. I haven't devoted this much time to any case hardly
24 that we've devoted here just to a matter of discovery. In
25 20 years, I've spent more time on your discovery issue than

1 on all the other cases I've ever had in those 22 years. I
2 never had to follow up with a magistrate judge in the manner
3 I've had to in this case.

4 MR. KLINE: I understand, Your Honor, but what I'm
5 saying is that the cville reports email address is one that
6 I've just received. So --

7 THE COURT: Okay. But the fact is it was out there a
8 long time ago.

9 MR. KLINE: I mean, the plaintiffs themselves
10 admitted they wouldn't have found it either and the only way
11 I would have known about it is through memory of one of my
12 Twitter accounts.

13 Like I've testified, I don't believe this is an
14 account that I had access to. I think I was advertising this
15 account for information collection for somebody else. So
16 this is an account I just got today.

17 The third-party vendor, I've -- I went through and
18 tried to compute it on Friday. It should have been already
19 done. This is just like a last -- the last thing, and it can
20 take five minutes. So there's only these two things left and
21 I have no way of doing either of these -- I have no way of
22 fulfilling the Court's orders for discovery obligations while
23 I'm in jail. The only way I'll be able to see if that
24 cvillereports email address belonged to me is through, you
25 know, being on an internet connection and looking through and

1 finding them myself.

2 The discovery vendor, I mean, like I said a bunch, I
3 can just do that right now. If the discovery vendor right
4 now sent in the verification code or the -- to log in, I can
5 get the verification code and tell them on the phone and it
6 will be done.

7 I'm not asking for more time. There's just nothing
8 else I can do. So if I were to go -- if I'm going to jail
9 tonight and tomorrow and you're saying that I can take that
10 time to purge myself, what I'm saying is there's nothing I
11 can do from jail to do that because I don't have any way
12 of --

13 THE COURT: They're not going to allow you over at
14 the Charlottesville jail to have any sort of electronic
15 devices, I wouldn't think. But the marshal can bring you
16 over to the courthouse and allow you to operate out of there
17 for several hours a day until you're able to comply with --

18 MR. KLINE: But Your Honor, the cvillereports email
19 address, the only way I'll know -- I'll be able to know is if
20 I can get in there or not is with the cell phone that I
21 have -- the cell phone that was deactivated. I have to go
22 in. I have to reactivate that phone, if I can, which, last
23 time I spoke to AT&T, they said I couldn't do that -- to see
24 if I can log into the account. That's the only way I'll be
25 able to do that. There's a good chance I'm not going to be

1 able to log into that account.

2 Then for the discovery vendor, like I said, that can
3 be done right now. It can be done on my -- on the phone that
4 I've already brought with me that's got a charge on it and
5 everything like that. But this cvillereports and gmail.com,
6 like, this will take me doing an -- like, doing my own
7 investigation to see if I'm able to get into this account to
8 see if I had ownership of it. There's no way I'm going to be
9 able to do that thoroughly from the cell phone that I brought
10 with me that's deactivated that has no connection and no
11 power. It's the old iPhone 6 that I've already handed over
12 for discovery. That's the only other one I could think of.
13 That's the only one I'll be able to get in and see. Either
14 that or trying to use, like, maybe a computer or something
15 like that to see if the password works. But that's the only
16 way I'll be able to see if that's -- that's -- that's the
17 account that I own.

18 Like I said, this --

19 THE COURT: Okay. Mr. Kline, you might recall that
20 we ordered you to bring with you everything that you might
21 need to help you get into compliance with these orders. You
22 should not have left anything --

23 MR. KLINE: I haven't, Your Honor. I did bring
24 everything. What I'm saying is that that phone that I
25 brought is a deactivated phone. So in order to use that

1 phone, I'm going to need to reactivate it and I'm going to
2 need to get maybe a new number for it. I'm not sure. I
3 asked the plaintiffs, I believe, after the last hearing if it
4 would be okay for me to switch my number back to the old
5 phone and they said -- they asked me afterwards and said they
6 spoke to the discovery vendor and said that would be okay. I
7 contacted AT&T and they said that's not possible for me to
8 reactivate or to put that number back on the phone. Now, I
9 have to recontact AT&T, and I'm not the account holder on the
10 AT&T account -- my father is. So there's almost no way that
11 I'm going to be able to reactivate that phone from jail. And
12 again, this is the email address that neither myself nor
13 plaintiffs or the Court knew about until, I guess, today.

14 THE COURT: You know -- this was in circulation among
15 those persons that you were dealing with in this event that
16 took place.

17 MR. KLINE: Right. But I don't think this is an
18 email address that was mine is what I was saying. I think
19 this is an email address that --

20 THE COURT: But, I mean, you would have seen it.

21 MR. KLINE: Those accounts are banned, Your Honor. I
22 don't have -- when I did my search for my discovery
23 obligations, and I went through and searched my emails and
24 everything like that, this would neither -- this email
25 address, this -- these tweets would never have shown up.

1 Just like plaintiff said, they aren't sure themselves how
2 this was sent to them or how the person that got this was
3 sent. This is an email address and these are messages that
4 previously were unknown because they don't come up with, you
5 know, a simple google search or anything like that. It looks
6 like these are messages that were sent from a Twitter account
7 that was deleted and one that -- when a Twitter account gets
8 deleted, you can't see any of its messages anymore, other
9 than screenshots and things like that, at least to my
10 knowledge. So this isn't an email address that I would have
11 possibly have known about other than through my own memory.
12 Like I said, I don't think this is an email address that I
13 owned. So the idea that I would have memory of tweeting
14 email to an address that I don't own, I just don't -- that's
15 not something that's realistic. I wouldn't have known about
16 this until today when I was told about it.

17 MS. PHILLIPS: Your Honor, this is Jessica Phillips.
18 May I speak to that?

19 THE COURT: Yes.

20 MS. PHILLIPS: Because Mr. Kline keeps looping
21 together -- lumping together -- excuse me -- plaintiff's and
22 his, and the difference is he tweeted numerous times right
23 after Charlottesville seeking evidence related to
24 Charlottesville, requesting that that evidence get sent to
25 this email address. Of course, plaintiffs have no idea about

1 this email address because Mr. Kline has never disclosed it,
2 but he clearly knew about it 100 percent and --

3 MR. KLINE: Absolutely not.

4 MS. PHILLIPS: -- and led other people to that.

5 Yes, you did, sir -- every documentation.

6 Time and again, Your Honor, this has been -- Mr.

7 Kline has proven to be testifying falsely based on

8 documentation that occurred in 2017, contemporaneous

9 documentation, all of which proved numerous different things

10 that he testified to both in his deposition at the civil

11 contempt hearing and again here today. Every time he's faced

12 with something that he did or said in 2017, he comes up with

13 some very convenient excuse. This is enough. You asked how

14 long we've been dealing with this; over 22 months -- no,

15 excuse me -- over 23 months. On January 25th of 2018 is when

16 we originally served our Interrogatories and documents on

17 this individual.

18 As you yourself said, Your Honor, this is not the --

19 this is not the end of his discovery obligations. This is

20 just the beginning, and I -- you know, I am incredibly

21 concerned that we're going to continue to have to come down

22 and appear before Your Honor at every step of the way over

23 the course of the next five to six months as Mr. Kline fights

24 tooth and nail to do what he is required to do under the

25 federal rules. Enough is enough.

1 MR. KLINE: Ma'am, I am not fighting tooth and nail
2 to get this stuff done. I am trying to get this stuff to
3 you.

4 THE COURT: Mr. Kline, look; this train has left the
5 station. Judge Hoppe and I both have decided that you have
6 not complied with the orders of the Court. You've not
7 fulfilled your requests -- I mean, the requests that have
8 been made to you that the plaintiffs have an absolute right
9 to the information they've requested.

10 I'll ask the marshal to allow you -- you say you can
11 do one of the things there in five minutes.

12 I would ask the marshal before he takes you to the
13 Charlottesville jail to allow you to -- a little time to do a
14 few things that you can to come into compliance, and then you
15 think about it overnight and if there's anything else you can
16 do, I'll ask the marshal to allow you -- to bring you back to
17 Charlottesville to the courthouse tomorrow and work for a few
18 hours there until you are in compliance or substantially in
19 compliance.

20 I'm going to issue an order, and the order -- I hope
21 we can address the things you need to do and I'll ask the --
22 probably ask the plaintiffs to let us know anything specific
23 that they think -- information, discovery, that you have a
24 reasonable opportunity to produce. The Court will -- you'll
25 have to satisfy the Court that you have done all that you can

1 do to be in compliance. You haven't done that yet. So I'm
2 going to ask the marshal to keep you in custody, allow you to
3 work a little time today, and then transport you to the
4 Charlottesville facility and allow you to come back tomorrow
5 for such time as is convenient to the marshal's office so
6 that you can work on some of the -- these matters.

7 MR. KLINE: Your Honor, there is nothing I can do
8 from here to complete that order, so am I going to be held
9 indefinitely?

10 THE COURT: Mr. Kline, the Court has pretty much
11 decided that your testimony is not credible. So we have to
12 verify now. You have not even complied enough for us to
13 verify whether you are telling the truth and cannot do
14 anymore. So the Court will have to have some hearing to
15 determine if you have reached -- we've reached a point with
16 you that you have complied. As I say, we can't do this and
17 every day meet with you to squeeze out one little bit of
18 information.

19 I would suggest that you really devote your time to
20 trying to remember everything that you can and do everything
21 you can to come into compliance.

22 Now, the hearing is over. I thank all of you for
23 joining us and we will issue another order either late this
24 afternoon or tomorrow morning.

25 Thank you very much. Goodbye.

1 MS. PHILLIPS: Thank you Your Honor.

2 (Proceedings concluded at 3:02 p.m.)

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9 "I certify that the foregoing is a correct transcript from
10 the record of proceedings in the above-entitled matter.

11
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13 /s/Sonia Ferris

January 8, 2020"
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